

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN WILSON,

Plaintiff,

v.

CORRECTIONS OFFICER FRANK HAMER,  
Shield #18467, and CAPTAIN JERMAINE  
PHILLIPS, Shield #1776,

Defendants.

**ORDER**

19-CV-2827 (MKB) (LB)

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MARGO K. BRODIE, United States District Judge:

Plaintiff John Wilson, proceeding *pro se*,<sup>1</sup> commenced the above-captioned action on May 3, 2019 against, *inter alia*, Defendants Corrections Officers Frank Hamer and Captain Jermaine Phillips.<sup>2</sup> (Compl., Docket Entry No. 1.) Plaintiff alleges that Defendants sexually assaulted him in his cell during a strip search in violation of 42 U.S.C. § 1983. (*Id.*) By report and recommendation dated February 28, 2020, Magistrate Judge Lois Bloom *sua sponte* recommended that the Court dismiss the action pursuant to Rules 16(f) and 37(b)(2)(A)(v) of the Federal Rules of Civil Procedure because “Plaintiff has failed to appear at two [c]ourt-ordered conferences” (the “R&R”). (*See* R&R, Docket Entry No. 31.) No party has objected to the R&R.

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<sup>1</sup> At the commencement of this action Plaintiff was incarcerated at the Brooklyn Detention Complex but has since been released from custody. (*See* Compl., Docket Entry No. 1; Letter dated Aug. 5, 2019, Docket Entry No. 13.)

<sup>2</sup> Plaintiff also named as Defendants Cynthia Brann, Commissioner of the Department of Corrections, and Warden Matthews. (*See* Compl.) By Memorandum and Order dated July 11, 2019, the Court dismissed Brann and Matthews from this action. (*See* Mem. & Order dated July 11, 2019, Docket Entry No. 9.)

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1), and dismisses the action pursuant to Rules 16(f) and 37(b)(2)(A)(v) of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to close this case and mail copies of this Order to Plaintiff at 1147 E. 212th Street, Apt. #2R, Bronx, NY 10469, and 1715 Randall Avenue, Apt. #3G, Bronx, NY 10473.

Dated: April 20, 2020  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge